

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT SEATTLE

11                  BENJAMIN SOMERLOTT,

12                  Plaintiff,

13                  v.

14                  MCNEILUS TRUCK AND  
15                  MANUFACTURING, INC.,

16                  Defendant.

17                  CASE NO. C16-0789MJP

18                  ORDER GRANTING  
19                  DEFENDANT'S MOTION TO  
20                  COMPEL INDEPENDENT  
21                  MEDICAL EXAMINATION

22                  THIS MATTER comes before the Court on Defendant's motion to compel. Dkt. # 36.

23                  Having considered the motion, response, reply and all related documents, the

24                  Court GRANTS the motion.

25                   **BACKGROUND**

26                  Plaintiff Benjamin Somerlott is bringing products liability, negligence, and breach of  
27 implied warranty claims against Defendant McNeilus Truck and Manufacturing Inc. based on an  
28 accident that occurred in 2014 while Plaintiff was driving one of Defendant's garbage trucks.  
29 Plaintiff alleges that the truck "violently ejected a broken beer bottle," lacerating the Plaintiff's

1 “right and dominant arm[, which] has resulted in disability.” Dkt. #2, ¶ 3.02. Based on this  
2 injury, Plaintiff is seeking damages for future medical expenses, loss of earnings and earning  
3 capacity, ongoing disability, disfigurement, and future physical pain and suffering. *Id.* ¶ 6.02.  
4 Relevant to the instant motion, Plaintiff later suffered an additional, unrelated injury to his  
5 shoulder after the laceration to his arm. Supp. McNulty Decl. (Dkt. # 45), Ex. 7.

6 Defendant seeks to compel an independent medical examination of Plaintiff’s arm,  
7 including both his shoulder—to assess the contribution that the secondary injury may have on  
8 his overall condition and restrictions—and his wrist, to assess the extent of the original injury.  
9 Dkt. # 36 at 2. Defendant has proposed that orthopedist Dr. Stephen Sun conduct the exam. In  
10 response, Plaintiff makes a number of arguments against permitting the exam, namely that the  
11 motion to compel is untimely, there are other reasonable avenues for Defendant to obtain the  
12 requested medical information, and Plaintiff’s shoulder injury is irrelevant to the claims in this  
13 action. Dkt. # 42 at 4-9.

14 **ANALYSIS**

15 Under Federal Rule of Civil Procedure 35, an independent medical exam is warranted  
16 where a party’s mental or physical condition is in controversy. Fed. R. Civ. P. 35(a)(1). Given  
17 that Plaintiff’s alleged damages stem solely from his arm injury, Defendant must understand the  
18 scope and nature of that injury in order to properly defend this action. Accordingly, Plaintiff  
19 shall submit to a medical exam of his arm, including of his wrist and shoulder, to take place  
20 during Dr. Sun’s next available appointment. If necessary, the September 18, 2017 discovery  
21 cutoff will be extended until Dr. Sun can complete the independent medical exam. During the  
22 exam, Dr. Sun’s proposed protocol—as described in the attached exhibit to the instant motion—

1 will be followed. *See* Supp. McNulty Decl. (Dkt. # 45), Ex. 8. A written report of Dr. Sun's  
2 findings will be provided to Plaintiff within 14 days of Dr. Sun's exam.

3 **CONCLUSION**

4 Given that the extent and nature of Plaintiff's arm injury are the central issue in this  
5 action, good cause exists for the Plaintiff to submit to an independent medical exam. The motion  
6 to compel is therefore GRANTED. Plaintiff is ordered to undergo an independent medical exam  
7 pursuant to the conditions described above.

8 The clerk is ordered to provide copies of this order to all counsel.

9 Dated this 8th day of September, 2017.

10   
11 Marsha J. Pechman  
12 United States District Judge